

***What Every Member of the
Trade Community Should Know About:***

WASTE & SCRAP

AS IT RELATES TO
BASE METALS OF CHAPTER 81



An Advanced Level
Informed Compliance Publication of the
U.S. Customs Service

June, 1998

PREFACE

On December 8, 1993, Title VI of the North American Free Trade Agreement Implementation Act (Pub. L. 103-182, 107 Stat. 2057), which is also known as the Customs Modernization Act or “Mod Act,” became effective. These provisions amended many sections of the Tariff Act of 1930 and related laws. Two new concepts which emerge from the Mod Act are “*informed compliance*” and “*shared responsibility*.” These concepts are premised on the idea that in order to maximize voluntary compliance with Customs laws and regulations, the trade community needs to be clearly and completely informed of its legal obligations. Accordingly, the Mod Act imposes a greater obligation on Customs to provide the public with improved information concerning the trade community’s responsibilities and rights under the Customs and related laws. In addition, both the trade and Customs share responsibility in carrying out import requirements. For example, under section 484 of the Tariff Act, as amended, (19 U.S.C. §1484) the importer of record is responsible for using reasonable care to enter, classify and value imported merchandise, and provide any other information necessary to enable Customs to properly assess duties, collect accurate statistics and determine whether any other applicable legal requirement is met. The Customs Service is then responsible for fixing the final classification and value of the merchandise. The failure of an importer of record to exercise reasonable care may lead to delay in the release of merchandise or the imposition of penalties.

This office has been given a major role in meeting Customs informed compliance responsibilities. In order to provide information to the public, Customs intends to issue a series of informed compliance publications, videos, and possibly CD-ROMs, on topics such as value, classification, entry procedures, determination of country of origin, marking requirements, intellectual property rights, record keeping, drawback, penalties and liquidated damages.

The National Commodity Specialist Division, Office of Regulations and Rulings has prepared this publication on Waste & Scrap of Chapter 81, HTSUSA, as part of a series of informed compliance publications regarding the classification of imported merchandise. It is hoped that this material, together with seminars and increased access to Customs rulings, will help the trade community in improving voluntary compliance with the Customs laws.

The information provided in this publication is for general information purposes only. Recognizing that many complicated factors may be involved in customs issues, an importer may wish to obtain a ruling under Customs Regulations, 19 CFR Part 177, or obtain advice from an expert (such as a licensed Customs Broker, attorney or consultant) who specializes in Customs matters. Reliance solely on the general information in this pamphlet may not be considered reasonable care.

Comments and suggestions are welcomed, and should be addressed to the Assistant Commissioner at the Office of Regulations and Rulings, U.S. Customs Service, 1300 Pennsylvania Avenue, N.W., Washington, D.C. 20229.

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WASTE & SCRAP AS IT RELATES TO BASE METALS OF CHAPTER 81

INTRODUCTION

Chapter 81 of the Harmonized Tariff Schedule of the United States (HTS) covers the base metals not covered by the preceding chapters of Section XV (chapters 72-80), cermets (bonded mixtures of ceramic material and metal), and articles thereof. The base metals covered by chapter 81 are tungsten (wolfram), molybdenum, tantalum, magnesium, cobalt, bismuth, cadmium, titanium, zirconium, antimony, manganese, beryllium, chromium, germanium, vanadium, gallium, hafnium, indium, niobium (columbium), rhenium, and thallium.

Waste and scrap of the base metals of chapter 81, except cobalt and tungsten, are free of duty (if entitled to column 1 treatment) and have been for more than 50 years. The term “waste and scrap” has taken on various meanings and use over the years. Webster’s II New Riverside University Dictionary defines “waste” as “a worthless or useless by-product.” The American Society for Metals Handbook (8th Edition) defines “scrap” as a “defective product not suitable for sale. Discarded metallic material from whatever source that may be reclaimed through melting or refining.” In HQ 555096 (July 7, 1989), the two types of scrap acquired and processed by scrap yards into commercial scrap were described by the protestant as “obsolete scrap (worn-out or discarded metal articles) and industrial scrap (leftover material from manufacturing operations performed on metal articles.” However, *Clipper Belt Lacer Co., Inc. v. United States*, 14 CIT 146 (1990), noted that “[i]t is not enough that an article be called a tariff term in the trade vernacular. There must be a showing that the article embodies the salient characteristics of the tariff term claimed.”

This document will discuss which “salient characteristics” the Customs Service believes must be present in order for a product to be classified waste or scrap, the application of Legal Note 8(a) to Section XV, and the application of the Harmonized Commodity Description and Coding System Explanatory Notes (EN’s) to heading 72.04.

GENERAL OVERVIEW

With respect to the base metals and articles covered by Section XV, the definition for waste and scrap is provided by Legal Note 8(a) to Section XV as “[m]etal waste and scrap from the manufacture or mechanical working of metals, and metal goods definitely not usable as such because of breakage, cutting-up, wear or other reasons.” The EN’s to heading 26.20 (which covers certain metallic ash and residues) refer to “[w]aste which derives from the mechanical working of metal, or scrap which consists of worn-out or broken metal articles” as excluded from that heading, but covered by Section XIV or XV, HTS. Except with respect to tungsten (wolfram), molybdenum, and

magnesium (the EN's for which headings contain additional guidance for identifying the waste and scrap of those headings, as further explained below), these are the only definitions provided by the HTS and EN's to guide us in making a waste or scrap determination under chapter 81.

Legal Note 8(a) refers to fragments of stock such as shavings, grinding, chips, and similar insignificantly-sized pieces which result from a manufacture or mechanical working operation. It also covers worn-out or broken metal articles no longer usable as such. If the imported article continues to conform with a recognized commercial specification, then it would be "usable as such" and would not fit the waste and scrap definition of Legal Note 8(a). Similarly, if the result of a manufacture or mechanical working operation is a product which has the "salient characteristics" of another tariff term, such as "powder" or "unwrought," then it would not be considered waste or scrap. Legal Note 8(a) does not cover any product which has been melted or cast into ingots, blocks, etc., even if it previously consisted of materials (e.g., shavings or grindings) which would have been considered scrap. Such articles are considered to be "unwrought" and are to be classified as such (see Additional U.S. Note 1 to Section XV), although there are instances in chapter 81 where both unwrought and waste and scrap articles are classified in the same subheading.

The EN's for headings 81.01 (tungsten (wolfram)), 81.02 (molybdenum), and 81.04 (magnesium) refer to the description of waste and scrap provided by the EN's for heading 72.04 (ferrous waste and scrap). The EN's for heading 72.04 refer to the definition of waste and scrap provided by Legal Note 8(a) to Section XV and describe the forms the waste and scrap covered by that heading generally take, including crop ends, filings, turnings, and similar residue from the manufacture or mechanical working of iron or steel. In the case of end portions, the EN's provide no dimensional limitations for classification as waste or scrap, but it is clear that the end portions so classified cannot be those which would fit another tariff description (i.e., have the "salient characteristics" of another tariff description). The EN's for heading 72.04 also provide that the waste and scrap of that heading do not include articles which, with or without repair or renovation, can be re-used for their former purposes or can be adapted for other uses. Also excluded as waste and scrap are articles which "can be refashioned into other articles without first being recovered as metal." Again, if the imported article conforms to an industry standard or meets a recognized commercial standard, it could not be classified as waste or scrap. Only if the article must first be remelted or subjected to chemical or similar processes in order to prepare or separate its metal properties for subsequent use would it be considered waste or scrap.

The EN's for heading 81.04 (magnesium) also specify that, with respect to raspings, turnings, or granules of magnesium, such articles will only be considered waste or scrap if they have not been graded or sorted according to size. When such articles have been graded or sorted according to size, they are classified under the 8104 subheading specifically referring to such articles.

To recap, no ingots, pigs, or other cast forms will be considered waste or scrap under chapter 81, HTS. To be considered waste or scrap, an article must be the by-product of a manufacture or

mechanical working of the metal, or a defective article which is worn, broken, or cut-up and is not able to be repaired, renovated, or adapted to other uses without first having its metal properties recaptured. In the case of magnesium, the by-product raspings, turnings, or granules cannot be graded or sorted according to size.

QUESTIONS TO ASK

1. How was this scrap obtained?
Is it a product derived from the manufacture or mechanical workings of the metal which in its imported condition:
 - cannot be used for its intended purpose or metal properties?
 - does not meet any other tariff definition other than waste and scrap?Is the imported product a worn out or broken article of metal definitely not usable as such because of breakage, cutting-up, wear or other reasons, which would only fit the waste and scrap tariff definition?
2. Does the imported product need to be melted down in order to eliminate the impurities or to capture its metal properties before it can be utilized within a manufacturing process?
3. Does the imported product meet the scrap standard specifications of the Institute of Scrap Recycling Industries, Inc., 1325 G Street, N.W., Washington, DC 20005 (202-737-1770)?
4. Is the imported product in ingot or other cast form?
5. Does the imported product conform to an industry standard or specification for the particular metal?
6. Does the imported product meet another tariff definition such as an unwrought product or cermet?

A yes answer to 1, 2 and/or 3 would indicate the product most likely would be properly classified as waste and scrap. A yes answer to 4, 5 and/or 6 would most likely eliminate the product from being classified as waste and scrap of base metal within chapter 81.

CONCLUSION

If the imported product is manufactured to a standard or is of high purity, it would be very unlikely that it would meet the “salient characteristics” of waste and scrap. An ingot or other similar unwrought form cast from remelt waste and scrap, would not be eligible for classification as waste and/or scrap within Chapter 81. If the shipment, however, consists of fragments of stock, removed during manufacturing or mechanical working of the metal or the shipment consists of various broken, cut-up or worn out articles of base metal, and the metal is not usable as such, the merchandise would have taken on the “salient characteristics” of waste and scrap.

It is important to exercise reasonable care when classifying imported products. If there is ever any question as to whether the product will meet the “salient characteristics” of waste and scrap,

a U.S. Customs Service office can be contacted to discuss the matter. To receive a written response to classification questions, follow the guidelines of Part 177 of the Customs Regulations for a binding ruling and submit the request to the Director, National Commodity Specialist Division, U.S. Customs Service, Attn: Classification Ruling Requests, New York, NY 10048.

ADDITIONAL INFORMATION

Customs Electronic Bulletin Board

The Customs Electronic Bulletin Board (CEBB) is an automated system which provides the entire trade community with current, relevant information regarding Customs operations and items of special interest. It was established as another effort to promote the Customs Service as "trade friendly" within the importing and exporting community. The CEBB posts timely information including proposed regulations, news releases, Customs publications and notices, etc which may be "downloaded" to your own PC. The Customs Service does not charge the public to use the CEBB. You only pay telephone charges. The CEBB may be accessed by modem or through Customs Home Page on the World Wide Web. If you access it by modem, you must have a personal computer with a modem. The CEBB supports modem speeds from 2400 to 28,800 baud. Set up your terminal as ANSI, set databits to 8, set parity to N and stopbits to 1. Dial (703) 921-6155 and log on with your name and choose a password. After a few questions, you are set to get up-to-date information from Customs. If you have any questions about the CEBB, call (703) 921-6236.

The Internet

The Customs home page on the Internet's World Wide Web --which began public operation on August 1, 1996-- also provides the entire trade community with current, relevant information regarding Customs operations and items of special interest. It was established as another effort to promote the Customs Service as "trade friendly" within the importing and exporting community. The home page will post timely information including proposed and final regulations, rulings, news releases, Customs publications and notices, *etc.*, which may be searched, read online, printed or "downloaded" to your own PC. In addition, the CEBB (see above) may be accessed through our Home Page. The Customs Service does not charge the public for this service, although you will need Internet access to use it. The Internet address for Customs home page is <http://www.customs.ustreas.gov>.

Customs Regulations

The current edition of *Customs Regulations of the United States*, in loose-leaf format, is available by subscription from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402. The bound 1997 Edition of Title 19, *Code of Federal Regulations*, which incorporates all changes to the *Customs Regulations* from April, 1996 through March, 1997 is also

available for sale from the same address. All proposed and final regulations are published in the *Federal Register* which is published daily by the Office of the Federal Register, National Archives and Records Administration, and distributed by the Superintendent of Documents. Information on on-line access to the *Federal Register* may be obtained by calling (202) 512-1530 between 7 a.m. and 5 p.m. Eastern time. These notices are also published in the weekly *Customs Bulletin* described below.

Customs Bulletin

The *Customs Bulletin and Decisions* ("*Customs Bulletin*") is a weekly publication which contains decisions, rulings, regulatory proposals, notices and other information of interest to the trade community. It also contains decisions issued by the U. S. Court of International Trade and Customs related decisions of the U. S. Court of Appeals for the Federal Circuit. Bound volumes are issued annually. The Customs Bulletin is available for sale from the Superintendent of Documents.

Video Tapes

- The U.S. Customs Service has prepared a two hour video tape in VHS format to assist Customs officers and members of the public in understanding the new *Rules of Origin for Textiles and Apparel Products* which became effective on July 1, 1996. Copies of this tape are available from many trade organizations, customs brokers, consultants and law firms. The tape may also be purchased for US\$20.00 (U.S. funds) directly from the Customs Service (see below for ordering information).

- In order to assist the trade, Customs has prepared a video tape entitled "*Customs Compliance: Why You Should Care.*" This 30 minute tape is divided into two parts. Part I, almost 18 minutes in length, is designed to provide senior executives and others in importing and exporting companies with an overview of some significant features of the Customs "Modernization Act" and some major reasons for adopting new strategies for minimizing legal exposure under this Act. Part II is intended primarily for compliance officers, legal departments and company officers involved in importing and exporting. This latter Part, approximately 12 minutes in length, explains why Customs and the trade can benefit from sharing responsibilities under Customs laws and it provides viewers with some legal detail relating to record keeping, potential penalties for non-compliance, and Customs Prior Disclosure program.

Part I features former Customs Commissioner George Weise, Assistant Commissioner for Regulations and Rulings Stuart Seidel, and Motorola's Vice President and Director of Corporate Compliance, Mr. Jack Bradshaw. Assistant Commissioner Seidel is the only speaker in Part II. The tape is priced at US\$15.00 including postage (see below for ordering information).

• The U. S. Customs Service has also prepared a 13-½ minute videotape, in VHS format, on Account Management. The videotape titled *Account Management: Team Building for World Trade* contains discussion on what Account Management is, why there is a need for Account Management, and discussions with Customs Account Managers and Accounts relating to the benefits of Account Management from both the perspective of the Customs Service and the Trade Community. The tape is priced at US\$15.00 including postage (see below for ordering information).

Video Tape Ordering Information: If you require further information, or would like to purchase one or more tapes, please forward your written request to: U.S. Customs Service, Office of Regulations and Rulings, Suite 3.4A, 1300 Pennsylvania Avenue, NW, Washington, DC 20229, Attn: Operational Oversight Division. Orders must be accompanied by a check or money order drawn on a U.S. financial institution and made payable to U.S. Customs Service.

Informed Compliance Publications

The U. S. Customs Service has also prepared other Informed Compliance publications in the *What Every Member of the Trade Community Should Know About*: series, which are available from the Customs Electronic Bulletin Board and the Customs Home Page (see above). As of the date of this publication, the following booklets were available:

- [Fibers & Yarns](#)
- [Buying & Selling Commissions](#)
- [NAFTA for Textiles & Textile Articles](#)
- [Raw Cotton](#)
- [Customs Valuation](#)
- [Textile & Apparel Rules of Origin](#)
- [Distinguishing Bolts from Screws](#)
- [Mushrooms](#)
- [Marble](#)
- [Peanuts](#)
- [Caviar](#)
- [Bona Fide Sales & Sales for Exportation](#)
- [Caviar](#)
- [Granite](#)
- [Internal Combustion Piston Engines](#)
- [Vehicles, Parts and Accessories](#)
- [Articles of Wax, Artificial Stone and Jewelry](#)
- [Classification of Festive Articles](#)
- [Tariff Classification](#)
- [Ribbons & Trimmings](#)
- [Footwear](#)

- Agriculture Actual Use
- Reasonable Care
- Drawback
- Lamps, Lighting & Candle Holders
- ABC's of Prior Disclosure
- Rules of Origin
- Records & Recordkeeping Requirements

Check the Customs Electronic Bulletin Board and the Customs Home Page for more recent publications.

Other Value Publications

Customs Valuation under the Trade Agreements Act of 1979 is a 96-page book containing a detailed narrative description of the customs valuation system, the customs valuation title of the Trade Agreements Act (§402 of the Tariff Act of 1930, as amended by the Trade Agreements Act of 1979 (19 U.S.C. §1401a)), the Statement of Administrative Action which was sent to the U.S. Congress in conjunction with the TAA, regulations (19 CFR §§152.000-152.108) implementing the valuation system (a few sections of the regulations have been amended subsequent to the publication of the book) and questions and answers concerning the valuation system. A copy may be obtained from the U.S. Customs Service, Office of Regulations and Rulings, Value Branch, 1300 Pennsylvania Avenue, N.W., Washington, D.C. 20229.

Customs Valuation Encyclopedia (with updates) is comprised of relevant statutory provisions, Customs Regulations implementing the statute, portions of the Customs Valuation Code, judicial precedent, and administrative rulings involving application of valuation law. A copy may be purchased for a nominal charge from the Superintendent of Documents, Government Printing Office, P.O. Box 371954, Pittsburgh, Pennsylvania 15250-7054.

Additional information may be obtained from Customs ports of entry. Please consult your telephone directory for a Customs office near you. The listing will be found under U.S. Government, Treasury Department.

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"Your Comments are Important"

The Small Business and Regulatory Enforcement Ombudsman and 10 regional Fairness Boards were established to receive comments from small businesses about federal agency enforcement activities and rate each agency's responsiveness to small business. If you wish to comment on the enforcement actions of U.S. Customs, call 1-888-REG-FAIR (1-888-734-3247).